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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

11 DEVONTE B. HARRIS,

Case No. 1:21-cv-00818-ADA-CDB (PC)

12 v.
Plaintiff,

**ORDER GRANTING DEFENDANTS'
MOTION TO STAY CASE AND TO
MODIFY DISCOVERY AND
SCHEDULING ORDER**

13
14 D. ARDEN, et al.,

(Doc. 32)

15 v.
Defendants.

17 Plaintiff Devonte B. Harris is a state prisoner proceeding pro se in this civil rights action.
18 This matter proceeds on Plaintiff's Eighth Amendment excessive force claims against Defendants
19 Arden, Gamboa, Garcia, Pasillas and Perez, and First Amendment retaliation claims against
20 Defendants Arden, Gamboa, Garcia and Pasillas.

21 **I. INTRODUCTION**

22 On August 21, 2023, the Court issued its Discovery and Scheduling Order in this matter.
23 (Doc. 28.) On January 8, 2024, Defendants filed a motion to stay these proceedings. (Doc. 32.)
24 The motion is supported by the Declaration of Andrea R. Sloan (*id.* at 8-9) and two exhibits filed
25 in a Kings County Superior Court criminal proceeding (*id.* at 10-17 [Exhibit A: Complaint filed
26 8/11/2020 & Exhibit B: Information filed 7/14/2022]). The Court finds a response by Plaintiff to
27 be unnecessary.

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1 **II. DISCUSSION**

2 Defendants seek a stay of this action pending resolution of criminal proceedings against
 3 Plaintiff now pending in the Kings County Superior Court, case number 20cm-4017. (Doc. 32 at
 4 1, 3.)

5 In this civil action, Plaintiff has alleged excessive force claims against Defendants Arden,
 6 Gamboa, Garcia, Pasillas and Perez, stemming from an incident that occurred on June 14, 2019.
 7 (See Docs. 14 & 15.) As a result of the same incident, Plaintiff is facing felony criminal charges
 8 of battery on a peace officer (Defendant Arden) and three counts of resisting an officer by means
 9 of force or threat (Defendants Arden, Garcia and Gamboa). (Doc. 32 at 4-5, 8, 15-16.) Defendants
 10 advise Plaintiff's motion for mental health diversion and mental health evaluation will be heard
 11 on January 24, 2024, in the state court action. (*Id.* at 5.) Defendants contend an extended stay of
 12 this action is appropriate pending resolution of the state court criminal matter. (*Id.*) Additionally,
 13 Defendants assert they are unable to properly assess their defenses, including the potential
 14 applicability of a *Heck*¹ bar, until the criminal proceeding is resolved. (*Id.*) Defendants
 15 additionally seek a stay of the previously issued Discovery and Scheduling Order. (*Id.*)

16 **The Motion To Stay the Case**

17 ***Applicable Legal Standards***

18 The district court "has broad discretion to stay proceedings as an incident to its power to
 19 control its own docket." *Clinton v. Jones*, 520 U.S. 681, 706 (1997) (citing *Landis v. North*
 20 *American Co.*, 299 U.S. 248, 254 (1936)). A stay is discretionary and the "party requesting a stay
 21 bears the burden of showing that the circumstances justify an exercise of that discretion." *Nken v. Holder*, 556 U.S. 418, 433–34 (2009). "Generally, stays should not be indefinite in nature."
 22 *Dependable Highway Exp., Inc. v. Navigators Ins. Co.*, 498 F.3d 1059, 1066–67 (9th Cir. 2007).
 23 If a stay is especially long or its term is indefinite, a greater showing is required to justify it.
 24 *Yong v. I.N.S.*, 208 F.3d 1116, 1119 (9th Cir. 2000). The Court should "balance the length of any
 25 stay against the strength of the justification given for it." *Id.*

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 28 ¹ *Heck v. Humphrey*, 512 U.S. 477 (1994).

1 “The Constitution does not ordinarily require a stay of civil proceedings pending the
 2 outcome of criminal proceedings.” *Keating v. Office of Thrift Supervision*, 45 F.3d 322, 324 (9th
 3 Cir. 1995). “In the absence of substantial prejudice to the rights of the parties involved,
 4 [simultaneous] parallel [civil and criminal] proceedings are unobjectionable under our
 5 jurisprudence.” *Id.* “Nevertheless, a court may decide in its discretion to stay civil proceedings ...
 6 ‘when the interests of justice seem[] to require such action.’” *Id.* (citations omitted).

7 ***Analysis***

8 When a civil plaintiff brings claims under section 1983 that are “related to rulings that
 9 will likely be made in a pending or anticipated criminal trial,” it is “common practice” for the
 10 court “to stay the civil action until the criminal case or the likelihood of a criminal case is
 11 ended.” *Wallace v. Kato*, 549 U.S. 384, 393–94 (2007); *see Fed. Saving & Loan Ins. Corp. v.*
 12 *Molinaro*, 889 F.2d 899, 902 (9th Cir. 1989) (“A court must decide whether to stay civil
 13 proceedings in the face of parallel criminal proceedings in light of the particular circumstances
 14 and competing interests involved in the case.”).

15 When determining whether a stay is appropriate, courts look to whether the criminal
 16 defendant’s Fifth Amendment rights may be implicated by the civil proceedings. *Keating*, 45
 17 F.3d at 324 (citing *Molinaro*, 889 F.2d at 902). Courts also consider (1) the interest of the
 18 plaintiff in proceeding with the litigation and the potential prejudice to the plaintiff of a delay;
 19 (2) the convenience of the court and the efficient use of judicial resources; (3) the interests of
 20 third parties; and (4) the interests of the public. *Keating*, 45 F.3d at 324-25.

21 Here, the civil rights action implicates Plaintiff’s Fifth Amendment rights. The facts and
 22 circumstances underlying Plaintiff’s criminal prosecution for felony battery by a prisoner on a
 23 non-prisoner involving Defendant Arden, and three felony counts of resisting an officer by
 24 means of force or threat as to Defendants Arden, Garcia and Gamboa, substantially overlap with
 25 the excessive force claims at issue in this case. Both cases involve the June 14, 2019 incident
 26 between Plaintiff and the Defendants and will likely involve substantially the same parties and
 27 witnesses. Thus, if this case proceeds, Defendants will seek discovery from Plaintiff, and he will
 28 be required to respond under oath. The discovery will involve Plaintiff’s alleged misconduct on

1 June 14, 2019. Thus, there exists a substantial risk of prejudice to Plaintiff's Fifth Amendment
2 rights. Furthermore, if Plaintiff invokes his Fifth Amendment rights it may impede Defendants'
3 discovery. *Jones v. Conte*, No. C045312S1, 2005 WL 1287017, at *1 (N.D. Apr. 19, 2005)
4 (finding that a stay of the civil case involving defendant in criminal action was appropriate
5 "because [i]f discovery moves forward, [the] defendant will be faced with the difficult choice
6 between asserting [his] right against self-incrimination, thereby inviting prejudice in the civil
7 case, or waiving those rights, thereby courting liability in the civil case") (internal quotations &
8 citation omitted).

9 Likewise, the other *Keating* factors also support a stay. Any prejudice to Plaintiff is
10 minimal given that both proceedings involve the similar facts and witnesses, and it is unlikely
11 that evidence will be lost, or memories will fade with passage of time. *McCormick v. Rexroth*,
12 No. C 09-4188 JT, 2010 WL 934242, at *3 (N.D. Cal. Mar. 15, 2010). In addition, the public
13 interest weighs in favor of a stay because "[t]he public has an interest in 'ensuring that the
14 criminal process is not subverted' by ongoing civil cases." *Douglas v. United States*, No. C 03-
15 4518, 2006 WL 2038375, at *6 (N.D. Cal. July 17, 2006).

16 Furthermore, if a stay is not granted, the defenses available may be limited. If the court in
17 the state court criminal action considers Plaintiff's factual allegations regarding the June 14, 2019
18 incident, such findings may be binding in this Court. Until resolution of the criminal
19 proceedings, it is unclear whether certain defenses are available, such as a *Heck* bar or issue
20 preclusion. See *Wallace*, 549 U.S. at 393–94 (noting that the question of whether a section 1983
21 action is barred by *Heck* is more difficult to answer where the plaintiff is facing charges of
22 resisting arrest or similar conduct arising from the same incident, and staying the action until the
23 underlying criminal proceedings are concluded may be appropriate) (citation omitted); *see also*
24 *Vivas v. Cty. of Riverside*, No. EDCV 15-1912-VAP (DTBx), 2016 WL 9001020, at *3 (C.D.
25 Cal. Jan. 12, 2016) (staying excessive force case where criminal prosecution for resisting arrest
26 was pending).

27 Judicial efficiency also favors imposition of a stay because Plaintiff's criminal action
28 involves many of the same facts. Accordingly, the Court will stay this action until Plaintiff's

1 criminal charges have been resolved.

2 **The Motion to Modify the Discovery and Scheduling Order & Request for**
 3 **Leave Nunc Pro Tunc to File Exhaustion Motion Once Stay is Lifted**

4 Defendants request they be granted leave to file an exhaustion motion – a deadline
 5 originally set for December 21, 2023 – *nunc pro tunc* once a stay of these proceedings is lifted.
 6 (Doc. 32 at 5-6.) Present defense counsel² Sloan was assigned to this matter on the same date as
 7 the deadline for the filing of an exhaustion motion. (*Id.* at 8, ¶ 2; *see also* Doc. 31 [Notice of
 8 Change in Designation of Counsel filed 12/21/23].) Counsel declares that she began assessing the
 9 case shortly thereafter and concluded Plaintiff has failed to exhaust his claims against Defendant
 10 Pasillas, as well as his claim that Defendants retaliated against him by submitting a false rules
 11 violation report arising from the June 14, 2019 incident. (*Id.* at 8, ¶¶ 6-7.) Defendants contend
 12 granting their request will “streamline the case and elimination issues for trial, saving the Court
 13 and all parties time and expense.” (*Id.* at 6.) Defendants assert Plaintiff will not be prejudiced by
 14 their request as it is made just weeks after the December 21, 2023 deadline. (*Id.*)

15 Pursuant to Rule 16(b), a scheduling order “may be modified only for good cause and
 16 with the judge's consent.” Fed. R. Civ. P. 16(b)(4). The “good cause” standard “primarily
 17 considers the diligence of the party seeking the amendment.” *Johnson v. Mammoth Recreations,*
 18 *Inc.*, 975 F.2d 604, 609 (9th Cir. 1992). The court may modify the scheduling order “if it cannot
 19 reasonably be met despite the diligence of the party seeking the extension.” *Id.* If the party was
 20 not diligent, the inquiry should end. *Id.*

21 Here, the deadline for the filing of an exhaustion motion expired the same day Deputy
 22 Attorney General Sloan was assigned to this case. Further, defense counsel’s assessment of the
 23 record in this action and conclusion purporting to find Plaintiff has failed to exhaust his
 24 administrative remedies as to some of the claims asserted was timely performed. Thus, defense
 25 counsel acted diligently, and the relevant deadline cannot otherwise be met despite that diligence.
 26 *Johnson*, 975 F.2d at 609; *see, e.g., Huckabee v. Medical Staff at CSATF*, No. 1:09-cv-00749-
 27 DAD-BAM (PC), 2017 WL 6855473, at *1-2 (E.D. Cal. Nov. 16, 2017) (granting defendants’

28 ² Deputy Attorney General Michael J. Yun was previously assigned in this matter.

1 motion to modify the discovery and scheduling order *nunc pro tunc*). Further, the Court agrees
2 that permitting Defendants leave to file an exhaustion motion promotes judicial efficiency and
3 will not unduly prejudice Plaintiff.³

4 The Court notes Defendants are obligated to respond to Plaintiff's request for production
5 of documents by February 2, 2024. (*See* Doc. 32 at 6 & 8, ¶ 8.) Defendants request their
6 "deadline to respond to Plaintiff's discovery until resolution of the related criminal case ... be
7 extended to 45-days after the lift of the stay." (*Id.* at 6.) In this instance, the Court will vacate the
8 Discovery and Scheduling Order issued August 21, 2023 and will reissue the discovery order
9 once the stay of the action pending the outcome of the criminal proceedings is lifted. The Court
10 will assign a new deadline for Defendants' response to Plaintiff's outstanding discovery request at
11 that time.

12 **III. CONCLUSION AND ORDER**

13 For the reasons given above, **IT IS HEREBY ORDERED** that:

- 14 1. Defendants' motion to stay this action (Doc. 32) is **GRANTED**;
15 2. The action is **STAYED** pending resolution of Plaintiff's criminal case;
16 3. Defendants **SHALL** file a status report on **February 15, 2024**, addressing the status
17 of the criminal proceedings, and every sixty (60) days thereafter, until those
18 proceedings are resolved; and
19 4. The Discovery and Scheduling Order issued August 21, 2023 (Doc. 28) is
20 **VACATED**. The Court will reissue a discovery and scheduling order once the stay of
21 this action has been lifted following resolution of the criminal proceedings now
22 pending in the Kings County Superior Court.

23 IT IS SO ORDERED.

24 Dated: January 10, 2024


25

UNITED STATES MAGISTRATE JUDGE

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28 ³ 18 days elapsed between the original deadline and the instant motion.